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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 BOARD OF TRUSTEES OF THE
11 LOCALS 302 AND 612 OF THE
12 INTERNATIONAL UNION OF
13 OPERATING ENGINEERS
14 CONSTRUCTION INDUSTRY
15 HEALTH AND SECURITY FUND,
16 et al.,

CASE NO. C22-0799JLR
ORDER

17 Plaintiffs,

18 v.

19 FENIX EARTHWORKS LLC,

20 Defendant.

21 **I. INTRODUCTION**

22 Before the court is Plaintiffs Board of Trustees of the Locals 302 and 612 of the
23 International Union of Operating Engineers Construction Industry Health and Security
24 Fund, Locals 302 and 612 of the International Union of Operating Engineers-Employers

1 Construction Industry Retirement Fund, and Western Washington Operating
 2 Engineers-Employers Training Trust Fund (collectively, the “Trusts”) motion for
 3 summary judgment. (Mot. (Dkt. # 31); Reply (Dkt. # 34).) Defendant Fenix Earthworks
 4 LLC (“Fenix”) did not respond to the motion. (*See generally* Dkt.) The court has
 5 considered the motion, the relevant portions of the record, and the applicable law. Being
 6 fully advised, the court GRANTS the Trusts’ motion for summary judgment.

7 **II. BACKGROUND**

8 The Trusts are joint labor-management funds established pursuant to Section
 9 302(c) of the Labor Management Relations Act (“LMRA”), 29 U.S.C. § 186(c), and the
 10 Employee Retirement Income Security Act (“ERISA”), 29 U.S.C. § 1001, *et seq.*
 11 (Compl. (Dkt. # 1) ¶ 2.) The Trusts provide certain benefits to eligible employees
 12 including health and welfare benefits, pension benefits, annuity benefits, and
 13 apprenticeship benefits. (Keck Decl. (Dkt. # 32) ¶ 17.) The Trusts are primarily funded
 14 by employer contributions. (*Id.* ¶ 7.) An employer’s obligation to contribute to the
 15 Trusts arises from a collective bargaining agreement (“CBA”) and “Associate
 16 Agreements,” the latter of which allow employers to contribute on behalf of
 17 non-bargained employees. (*Id.* ¶¶ 9-10.) The employer reports its contributions to the
 18 Trusts on a per hour paid basis. (*Id.* ¶ 11.) The Trusts periodically perform payroll audits
 19 to confirm that employers are accurately reporting and contributing on behalf of its
 20 bargained and non-bargained employees. (*Id.* ¶ 16.)

21 In 2017, Fenix executed four trust agreements (the “Trust Agreements”) through
 22 which it bound itself to the terms and conditions of the CBA between Local 302 and 612

1 of the International Union of Operating Engineers and the Associated General
 2 Contractors of Washington and the Associate Agreement with the Trusts. (*Id.* ¶¶ 18, 20;
 3 *see also id.* ¶ 18, Ex. B (“Trust Agreements”); *id.* ¶ 21, Ex. C (“CBAs”).) As a signatory
 4 employer, Fenix agreed to pay the Trusts monthly contributions as well as other funds as
 5 set forth in the CBA, such as union dues and ancillary funds. (Keck Decl. ¶¶ 22-26. *See*
 6 *generally* CBAs.) After signing the Trust Agreements, Fenix hired bargained and
 7 non-bargained employees that performed work covered by the CBA and Associate
 8 Agreement, triggering Fenix’s contribution and reporting obligations under the Trust
 9 Agreements. (Keck Decl. ¶¶ 27-28.)

10 The Trusts filed this lawsuit against Fenix on June 8, 2022, claiming Fenix either
 11 failed to pay or failed to timely pay contributions for the work months of August 2021
 12 through the time of filing. (*See generally* Compl.) In its complaint, Fenix sought
 13 (1) judgment on unpaid contributions, liquidated damages, and interest in connection
 14 with the delinquent period of August 2021 through April 2022; (2) judgment on “all
 15 outstanding contributions, liquidated damages, and interest due to [the Trusts] for the
 16 months of May 2022 through current”; (3) reasonable attorneys’ fees and costs; and
 17 (4) “such other and further relief as this court deems just and equitable.” (Compl. at 4.)
 18 Fenix eventually appeared and answered the complaint. (*See* Answer (Dkt. # 24).)

19 On November 2, 2023, a Fringe Benefit Contributions Compliance Report (the
 20 “Audit”) was issued, identifying specific dollar totals that Fenix underreported and/or
 21 underpaid in fringe benefit contributions for the January 2021 through September 2022
 22 Audit period. (Keck Decl. ¶ 30 & Ex. E (“Audit”).) The Audit also determined that, with

1 respect to the same time period, Fenix owed specified amounts of liquidated damages,
 2 interest, ancillary funds, and Dues Check-off, but that it had overpaid on certain
 3 contributions by nearly \$50,000. (Keck Decl. ¶¶ 31-36. *See generally* Audit.)

4 On February 2, 2024, the parties filed a stipulated motion in which defense
 5 counsel sought to withdraw from this matter due to Fenix’s “inability to continue to pay
 6 legal counsel and the winding up of the business entity.” (Stip. Mot. (Dkt. # 30) at 4.)
 7 Fenix consented to the withdrawal. (*Id.* at 8.) The court granted the motion to withdraw
 8 but declined to extend unexpired case deadlines, as the parties had requested in their
 9 motion. (2/5/24 Order (Dkt. # 30) at 4; *see also* Stip. Mot. at 5.) The Trusts timely filed
 10 their motion for summary judgment, to which Fenix did not respond. (*See generally*
 11 Mot.; Dkt.) The motion is now ripe for decision.

12 III. ANALYSIS

13 The court sets forth the relevant legal standard before turning to the merits of the
 14 Trusts’ motion for summary judgment.

15 A. Legal Standard

16 Summary judgment is appropriate if the evidence viewed in the light most
 17 favorable to the non-moving party shows “that there is no genuine dispute as to any
 18 material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P.
 19 56(a); *see Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). A fact is “material” if it
 20 might affect the outcome of the case. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248
 21 (1986). A factual dispute is “genuine” only if there is sufficient evidence for a
 22 reasonable fact finder to find for the non-moving party.” *Far Out Prods., Inc. v. Oskar*,

1 | 247 F.3d 986, 992 (9th Cir. 2001) (citing *Anderson*, 477 U.S. at 248-49). The moving
 2 | party bears the initial burden of showing there is no genuine dispute of material fact and
 3 | that it is entitled to prevail as a matter of law. *Celotex*, 477 U.S. at 323. If the moving
 4 | party meets its burden of production, the burden then shifts to the nonmoving party to
 5 | identify specific facts from which a factfinder could reasonably find in the nonmoving
 6 | party's favor. *Celotex*, 477 U.S. at 324; *Anderson*, 477 U.S. at 250.

7 | **B. The Trust Funds's Motion for Summary Judgment**

8 | This action is governed by ERISA, the principal purpose of which is to enable the
 9 | prompt collection of outstanding employer contributions. *Cent. States, Se. & Sw. Areas*
 10 | *Pension Fund v. Cent. Transp.*, 472 U.S. 559, 580 (1985). ERISA provides in relevant
 11 | part as follows:

12 | Every employer who is obligated to make contributions to a multiemployer
 13 | plan under the terms of the plan or under the terms of a collectively bargained
 14 | agreement shall, to the extent not inconsistent with law, make such
 contributions in accordance with the terms and conditions of such plan or
 such agreement.

15 | 29 U.S.C. § 1145.

16 | A civil action may be brought . . . (3) by a participant, beneficiary, or
 17 | fiduciary (A) to enjoin any act or practice which violates any provision of
 18 | this subchapter or the terms of the plan, or (B) to obtain other appropriate
 equitable relief (i) to redress such violations or (ii) to enforce any provisions
 of this subchapter or the terms of the plan.

19 | *Id.* § 1132(a)(3).

20 | In any action under this subchapter by a fiduciary for or on behalf of a plan
 21 | to enforce section 1145 of this title in which a judgment in favor of the plan
 22 | is awarded, the court shall award the plan— (A) the unpaid contributions,
 (B) interest on the unpaid contributions, (C) an amount equal to the greater
 of— (i) interest on the unpaid contributions, or (ii) liquidated damages

1 provided for under the plan in an amount not in excess of 20 percent (or such
 2 higher percentage as may be permitted under Federal or State law) of the
 3 amount determined by the court under subparagraph (A), (D) reasonable
 4 attorney's fees and costs of the action, to be paid by the defendant, and
 5 (E) such other legal or equitable relief as the court deems appropriate.

6 4 *Id.* § 1132(g)(2). Section 1132(g)(2) is “mandatory and not discretionary,” and it applies
 7 when (1) the employer is delinquent at the time the action is filed, (2) the fiduciary
 8 obtains a judgment in favor of the plan, and (3) the plan provides for such an award. *Nw.
 9 Adm'rs, Inc. v. Albertson's, Inc.*, 104 F.3d 253, 257 (9th Cir. 1996) (quoting *Operating
 Eng'rs Pension Tr. v. Beck Eng'g & Surveying, Co.*, 746 F.2d 557, 569 (9th Cir. 1984)).

10 5 The Trusts “have a statutory and fiduciary duty to collect contributions that
 11 are owed.” *Operating Eng'rs Pension Tr. v. A-C Co.*, 859 F.2d 1336, 1343-44
 12 (9th Cir. 1988). Where an employer overpays contributions, ERISA provides for
 13 the return of those contributions only if the employer shows that they resulted
 14 from a mistake of fact and that the equities favor restitution. *British Motor Car
 15 Distrib., Ltd. v. S.F. Auto. Indus. Welfare Fund*, 882 F.2d 371, 374 (9th Cir.
 16 1989).

17 6 The court now addresses the Trusts’ motion, guided by these general principles.

18 7 1. August 2021 Through June 2022 Delinquent Period

19 8 The Trusts assert that Fenix failed to pay certain contributions for the work
 20 months of August 2021 through June 2022. (Mot. at 14.) The Trusts present evidence
 21 that, in connection with the August 2021 through June 2022 delinquency period, Fenix
 22 owes \$318,546.82 in unpaid contributions. (Keck Decl. ¶ 12, Ex. A (remittance reports
 for the delinquent period); *id.* ¶ 29, Ex. D (claim summary).)

1 The court has reviewed the Trusts' materials and concludes that they have met
2 their burden of production on this claim. Because Fenix fails to rebut the Trusts'
3 position, the court GRANTS summary judgment to the Trusts on their claim for
4 delinquent contributions stemming from the August 2021 through June 2022 delinquent
5 period, in the total amount of **\$318,546.82**.

6 2. The January 2021 Through September 2022 Audit Period

7 The Trusts next assert that, pursuant to the Audit of the period extending from
8 January 2021 through September 2022, Fenix failed to report certain compensable hours
9 for its bargaining unit employees and therefore failed to pay the required contributions
10 for those unreported hours. (Mot. at 15.) The Audit also revealed that Fenix overpaid
11 certain contributions during the Audit period. (*Id.* at 17.) The Trusts provide evidence
12 that, in connection with the January 2021 through September 2022 Audit period, Fenix
13 owes \$309,442.26 in unpaid Health, Pension, and Training contributions, \$5,316.23 in
14 ancillary funds, and \$13,640.05 for Dues Check-Off. (Canada Decl. ¶ 8; Keck Decl. ¶ 35
15 & Ex. F (accounting chart). *See generally* Audit.) The Trusts have also agreed to offset
16 the underpaid amounts by \$1,506.59, which is the amount that Fenix overpaid as a result
17 of clerical error. (Mot. at 19; Keck Decl. ¶ 39); *see British Motor Car Distribs.*, 882 F.2d
18 at 374.

19 The court has reviewed the Trusts' materials and concludes that they have met
20 their burden of production on this claim. Because Fenix fails to rebut the Trusts'
21 position, the court GRANTS summary judgment to the Trusts on its claim for unpaid
22 contributions and related ancillary funds and dues—less \$1,506.59 in overpayments—in

1 connection with the January 2021 through September 2022 Audit period, in the total
2 amount of **\$326,711.95.**

3 3. Liquidated Damages, Interest, and Attorney's Fees and Costs

4 Finally, the Trusts assert that Fenix owes liquidated damages, interest, and
5 attorney's fees and costs under ERISA and pursuant to the terms of the Trust
6 Agreements. (Mot. at 19); *see also* 29 U.S.C. § 1132(g)(2) (providing that, in the event a
7 fiduciary secures judgment in an action to collect delinquent contributions, the court
8 "shall award" interest on the unpaid contributions, liquidated damages, reasonable
9 attorney's fees and costs, and other legal or equitable relief as appropriate). The Trusts
10 present evidence that Fenix owes \$42,972.80 in liquidated damages and \$69,079.20 in
11 interest for the August 2021 through June 2022 delinquent period (Keck Decl. ¶ 29 & Ex.
12 D (claim summary)), as well as \$37,285.22 in liquidated damages, \$71,713.74 in interest,
13 and \$8,153.50 in Audit accounting fees for the January 2021 through September 2022
14 Audit period (Canada Decl. ¶ 9; *id.* ¶ 16, Ex. A (random fringe benefit contributions
15 compliance report)). The Trusts state their intention to file a motion for attorney's fees
16 and costs at a later time "should it prevail on this motion for summary judgment." (Mot.
17 at 23.)

18 The court has reviewed the Trusts' materials and concludes that they have met
19 their burden of production on this claim. The court further concludes that an award under
20 Section 1132(g)(2) is mandated because the Trusts have established (1) their entitlement
21 to judgment, (2) that unpaid contributions existed at the time of suit, and (3) that the Trust
22 Agreements expressly "provide for the assessment of interest, liquidated damages, costs,

1 and attorney fees.” (Mot. at 19, 21; Trust Agreements at 83; Keck Decl. ¶¶ 42-47 & Exs.
2 G-J (revised trust agreements and collections policy).) *See Albertson’s, Inc.*, 104 F.3d at
3 257. For this reason, and because Fenix fails to rebut the Trusts’ position, the court
4 GRANTS summary judgment to the Trusts on its claim for liquidated damages, interest,
5 and Audit accounting fees in connection with the August 2021 through June 2022
6 delinquent period and the January 2021 through September 2022 Audit period, in the
7 total amount of **\$229,204.46**. The court likewise GRANTS summary judgment to the
8 Trusts on its claim for reasonable attorney’s fees and costs, in an amount to be
9 determined at a later date.

IV. CONCLUSION

For the foregoing reasons, the court GRANTS the Trusts' motion for summary judgment (Dkt. # 31). Specifically, the court ORDERS as follows:

13 1. The court GRANTS summary judgment in the Trusts' favor and
14 VACATES the trial date and all remaining pretrial deadlines (*see* Sched Order (Dkt.
15 # 27));

16 2. The court GRANTS the Trusts' request for a judgment in the total amount
17 of **\$874,463.23**, comprising: (1) \$318,546.82 in delinquent contributions and associated
18 interest and liquidated damages stemming from the August 2021 through June 2022
19 delinquent period; (2) \$326,711.95 in unpaid contributions and related ancillary funds
20 and dues, less overpayments, in connection with the January 2021 through September
21 2022 Audit period; and (3) \$229,204.46 in liquidated damages, interest, and Audit

accounting fees for the August 2021 through June 2022 delinquent period and the January 2021 through September 2022 Audit period.

3. The court GRANTS the Trusts' request for reasonable attorney's fees and costs in an amount yet to be determined. The Trusts shall file a motion for attorney's fees by no later than **April 26, 2024** and note the motion in accordance with Local Civil Rule 7(d)(3). *See* Local Rules W.D. Wash. LCR 7(d)(3).

Dated this 29th day of March, 2024.


JAMES L. BOBART

JAMES L. ROBART
United States District Judge